

National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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Holsum de Puerto Rico, Inc. (24-CA-9408, et al.; 344 NLRB No. 85) Toa Baja, PR May 24, 2005. Affirming the administrative law judge's recommendations, the Board held that the Respondent violated Section 8(a)(1) of the Act by: (a) engaging in surveillance of employees' protected activities; (b) creating the impression of surveillance of employees' protected activities; (c) threatening employees Ramon Cruz with unspecified adverse consequences; (d) coercively interrogating employees Cruz, David Montalvo, and Rolando Rodriguez; and (e) coercively interrogating employee Jose Santiago in May 2003. It also found that the Respondent violated Section 8(a)(3) and (1) by terminating the employment of Jose Torres Figueroa on May 1, 2003, and Jose Santiago Maldonado on May 29, 2003, because they supported Auto Workers Local 2429. [\[HTML\]](#) [\[PDF\]](#)

The Board amended the judge's third conclusion of law to correspond to the Section 8(a)(1) violations found and, at the General Counsel's request, modified the judge's recommended order to require the Respondent to post notices in both English and Spanish.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Carlos Martinez Toro, an Individual and Auto Workers Local 2429; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Hato Rey on various dates between Nov. 17, 2003 and Jan. 13, 2004. Adm. Law Judge George Alemán issued his decision Sept. 10, 2004.

Jerry's Chevrolet, Cadillac, Inc. (16-RC-10571; 344 NLRB No. 87) Hudson Oaks, TX May 23, 2005. Chairman Battista and Member Schaumber reversed the Regional Director's finding appropriate the petitioned-for single-facility unit of service technicians, apprentices, and lube rack technicians at the Employer's Chevrolet/Cadillac dealership in Hudson Oaks, Texas. The majority concluded, contrary to the Regional Director and dissenting Member Liebman, that the Employer rebutted the single-facility presumption and that the appropriate unit must include service employees employed at all four of the Employer's Hudson Oaks dealerships—Buick, GMC, Pontiac (Buick/GMC), Nissan, Durant Toyota, and Chevrolet/Cadillac. [\[HTML\]](#) [\[PDF\]](#)

The majority acknowledged that the service employees work in separate buildings under their respective service center managers and that there is little employee interchange. They found however that those factors are overcome by the close proximity of the dealerships (the petitioned-for dealership is located within 1000 feet of the other three dealerships), the centralization of labor relations, the high functional integration of the dealerships, and the similarity of skills, pay, and job functions at all locations. Because the Petitioner (Machinists) has not indicated a willingness to proceed to an election in the broader unit found appropriate, Chairman Battista and Member Schaumber dismissed the petition.

Member Liebman concluded that the record as a whole supports the Regional Director's finding that the Employer failed to establish that the Chevrolet/Cadillac technicians lack a separate identity from the technicians at the Employer's other dealerships. She stated: "The evidence of substantial autonomy, differences in skills and duties, and lack of interchange,

clearly outweighs other factors which might suggest that the Employer has met its burden of rebutting the single-facility presumption in this case. Arguably, a unit covering the technicians at all four of the Employer's dealerships would constitute an appropriate unit as well. That possibility, however, does not alter the fact that the petitioned-for single-facility unit of technicians is an appropriate unit in this case."

(Chairman Battista and Members Liebman and Schaumber participated.)

Wild Oats Markets, Inc. (34-CA-9586, et al.; 344 NLRB No. 86) Westport, CT May 26, 2005. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(1), (3), and (4) of the Act in response to an attempt by Food and Commercial Workers Local 371 to organize employees at the Respondent's store in Westport, Connecticut. The Respondent's misconduct included coercively interrogating employees about their union activities; threatening them with suspension, job loss, or other unspecified reprisals; maintaining an unlawfully broad no-solicitation rule; refusing to hire or consider hiring employees because of their union activities; and reducing the hours of Rosemary Reder because the Union filed NLRB charges on her behalf. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Schaumber reversed the judge's finding that the Respondent unlawfully threatened employees with loss of benefits, in violation of Section 8(a)(1), by stating in a flyer to employees that "in collective bargaining you could lose what you have now." In their view, considered by itself, the statement was a factually accurate observation regarding a possible negative outcome of collective bargaining, which is protected speech under Section 8(c). See *UARCO, Inc.*, 286 NLRB 55, 58 (1987), petition for review denied 865 F.2d 258 (6th Cir. 1988).

Contrary to her colleagues, Member Liebman would find that, in context, the quoted statement from the Respondent's flyer violated Section 8(a)(1). She noted that:

The flyer equated signing a union authorization card with signing a "blank check", and listed a host of horrible consequences that could ensue, including loss of "what you have now." Thus, the statement in question, considered not in isolation but in the context of the flyer as a whole, could have reasonably led employees to believe that they could lose existing benefits merely by signing a card authorizing the Union to represent them in collective bargaining.

The Board found it unnecessary to pass on the judge's finding that the Respondent unlawfully threatened employees with job loss or other unspecified reprisals by stating in a letter to employees that the Union "would hurt business which we all depend on for our livelihood" because the finding of an additional job-loss threat would not materially affect the remedy and

would therefore be cumulative. It modified the judge's recommended Order to conform to the remedy for an unlawful refusal to consider for hire as set forth in *FES*, 331 NLRB 9, 15 (2000), supplemental decision 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Food & Commercial Workers Local 371; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Hartford, Nov. 7-9 and 19, 2001. Adm. Law Judge Steven Fish issued his decision June 24, 2002.

DECISION OF ADMINISTRATIVE LAW JUDGE

Stagehands Referral Service, LLC and Stage Employees Local 84 (an Individual) West Hartford, CT May 24, 2005. 34-CA-10971, 34-CB-2774; JD(NY)-21-05, Judge Joel P. Biblowitz.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Postal Workers Red Bank Local (an Individual) (22-CB-9921; 344 NLRB No. 89) Eatontown, NJ May 27, 2005. [\[HTML\]](#) [\[PDF\]](#)

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issue that is litigable in the unfair labor practice proceeding.)

Regent Assisted Living, Inc. d/b/a Sunshine Villa (Service Employees Local 415) (32-CA-21856-1; 344 NLRB No. 88) Portland, OR May 27, 2005. [\[HTML\]](#) [\[PDF\]](#)

**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS
IN REPRESENTATION CASES**

*(In the following cases, the Board adopted Reports of
Regional Directors or Hearing Officers in the absence of exceptions)*

DECISION AND CERTIFICATION OF REPRESENTATIVE

Ferrovial Agroman, Inc., San Juan, PR, 24-RC-8448, May 24, 2005 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Caliper, Inc., Mt. Storm, WV, 5-RC-15832, May 25, 2005 (Chairman Battista and Members Liebman and Schaumber)

Wal-Mart Stores, Inc., Loveland, CO, 27-RC-8356, May 25, 2005 (Chairman Battista and Members Liebman and Schaumber)

DECISION, ORDER, AND DIRECTION OF THIRD ELECTION

Loomis Fargo & Co., Attleboro, MA 1-RC-21749, May 27, 2005 (Chairman Battista and Members Liebman and Schaumber)

*(In the following cases, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)*

CD&L, Cary, NC, 11-RC-5699, May 24, 2005 (Chairman Battista and Members Liebman and Schaumber)

Christiana Fire Company, Inc., Christiana, PA, 4-RC-21000, May 24, 2005 (Chairman Battista and Members Liebman and Schaumber)

Raleigh Lions Clinic for the Blind, Louisville, KY, 9-RC-17985, May 24, 2005
(Chairman Battista and Members Liebman and Schaumber)

W. Rose, Inc., Sharon Hill, PA, 4-RC-21012, May 24, 2005 (Chairman Battista and Members Liebman and Schaumber)

Miscellaneous Board Orders

**ORDER [denying Employer's appeal of Regional Director's
order to open and count challenged ballot]**

Heartland of Holly Glen, Toledo, OH, 8-RC-16701, May 24, 2005 (Chairman Battista and Members Liebman and Schaumber)

NOTICE OF OPPORTUNITY TO FILE POSITION STATEMENTS
[Due June 5, 2005]

Adventist Glenoaks Hospital, Glendale Heights, IL, 13-RC-21289, May 26, 2005
(Chairman Battista and Members Liebman and Schaumber)

Lutheran General Hospital, Park Ridge, IL, 13-RC-20426, May 26, 2005 (Chairman Battista and
Members Liebman and Schaumber)
